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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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Telecommunications Services for  
Individuals with Hearing and Speech  
Disabilities, and the Americans with  
Disabilities Act of 1990  
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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

CC Docket No. 98-67

**COMMENTS OF AT&T CORP.**

Pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, and the Commission's Public Notice, DA 03-1527, released May 7, 2003, AT&T Corp. ("AT&T") submits these comments on the Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate submitted by the National Exchange Carrier Association ("NECA") on May 5, 2003 per its *Errata*.

NECA proposes that it will *not* reimburse carriers for international calls placed over Internet Protocol ("IP") Relay Service. This appears to be unlawful because there is no Commission rule or precedent that would allow NECA to restrict cost recovery of IP Relay providers in this manner. The Commission should clarify that absent Telecommunications Relay Service ("TRS") Fund reimbursement providers should not have to serve international IP Relay traffic. Additionally, to the extent that AT&T has provided international IP Relay in reliance on the Commission's classification, the Commission should order NECA to reimburse AT&T from the TRS Fund.

NECA has also proposed lowering the reimbursement rate for Video Relay Service ("VRS") to \$14.644, significantly lower than the current rate of \$17.044. This does

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not provide an appropriate incentive for providers to invest in research and development of new features that can potentially improve this service. Moreover, many VRS providers are providing service based on waivers currently provided by the Commission. The Commission should extend the existing VRS waivers, which are due to expire on December 31, 2003, for five years.

Finally, the Commission should eliminate the flowback of the LECs' TRS Fund contributions from access charges, just as it eliminated flowback of their Universal Service Fund ("USF") contributions. Recovery of TRS Fund contributions through access charges is an impermissible implicit subsidy.

**I. THE COMMISSION SHOULD CLARIFY THAT ABSENT REIMBURSEMENT FROM THE TRS FUND CARRIERS ARE NOT REQUIRED TO PROVIDE INTERNATIONAL IP RELAY.**

NECA states that "[t]he 2003 –2004 payment formula for traditional TRS and IP is based on an average of projected completed monthly interstate TRS minutes of use, including international minutes, and all projected completed monthly IP minutes, *excluding* international, and their projected costs." NECA at 2 (footnotes omitted, emphasis added). NECA provides no rationale for its decision not to fund international IP Relay minutes through the TRS Fund. In the *IP Relay Order*, 17 FCC Rcd. 7779, ¶¶ 1, 11, 14 (2002), the Commission found that IP Relay falls within the statutory definition of TRS, and that TRS providers providing IP Relay are eligible to recover their costs in accordance with Section 225 of the Communications Act. See 47 U.S.C. § 225. The Commission has not made any ruling that would suggest that providers of international IP Relay would not qualify for reimbursement from the TRS Fund. To the contrary, NECA was only to monitor

and report whether IP Relay had increased the amount of international minutes subject to reimbursement from the TRS Fund.<sup>1</sup>

If the Commission permits NECA to exclude international IP Relay from the TRS Fund reimbursement process, it should clarify that carriers are not required to provide international IP Relay service. Additionally, the Commission should order NECA to reimburse AT&T for pre-existing international IP traffic. On March 23, 2003, NECA advised AT&T that it would stop reimbursement for these calls and retroactively applied the policy to calls that AT&T had completed in February and March 2003. Because there is no basis in Commission rule or policy for NECA to have stopped reimbursement for international IP Relay calls, AT&T requests the Commission to order NECA to reimburse AT&T for this traffic. The Commission should also clarify TRS providers' obligation to provide international IP Relay in the absence of future reimbursement from the TRS Fund.

## **II. NECA SHOULD NOT DECREASE THE REIMBURSEMENT RATE FOR VRS, AND THE COMMISSION SHOULD EXTEND THE VRS WAIVERS.**

In its filing NECA has also proposed lowering the reimbursement rate for Video Relay Service ("VRS") to \$14.644, significantly lower than the current rate of \$17.044. Many VRS providers are providing service based on waivers currently provided by the Commission, which are due to expire on December 31, 2003. For example, one of the waivers set to expire is the requirement that service be provided 24 hours a day, seven days

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<sup>1</sup> *Recommended Internet Protocol (IP) Cost Recovery Guidelines Developed and Submitted by the Interstate TRS Fund Advisory Council and the TRS Fund Administrator*, filed October 9, 2002, at 14 ("*Recommended Guidelines*") ("The Fund Administrator should monitor the monthly provider minute reports and track IP Relay minutes separately to develop a historical base for future projections").

a week and 365 days a year. If this waiver is not extended, providers will be required to staff and operate their VRS centers around the clock which will inevitably increase the cost of providing VRS and these additional costs will not be recoverable during the reimbursement period. Additionally, lowering the reimbursement rate does not provide an appropriate incentive for VRS providers to invest in research and development of new features that can potentially improve this emerging service. Accordingly, AT&T asks the Commission to order NECA *not* to lower the VRS reimbursement rate from its current \$17.0444 and requests the Commission to extend the existing waivers, as set forth in DA 01-3029, rel. Dec. 31, 2001, for a period of 5 years.

### **III. THE COMMISSION SHOULD ELIMINATE FLOWTHROUGH OF LECS' TRS CONTRIBUTIONS FROM ACCESS CHARGES.**

As the United States Court of Appeals for the Fifth Circuit has held not once, but three times, "the plain language of § 254(e) does not permit the [Commission] to maintain *any* implicit subsidies."<sup>2</sup> Congress anticipated that all access charges and rate structures would be free of hidden subsidies: "To the extent possible, the conferees intend that any support mechanisms continued or created under new section 254 should be explicit rather than implicit as many support mechanisms are today."<sup>3</sup>

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<sup>2</sup> *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 425 (5th Cir. 1999) (emphasis in original); *see also COMSAT Corp. v. FCC*, 250 F.3d 931, 938 (5th Cir. 2001); *Alenco Comm. v. FCC*, 201 F.3d 608, 623 (5th Cir. 2000).

<sup>3</sup> S. REP. NO. 104-230, at 131 (1995); *see also id.* at 30 ("In establishing competitively neutral *universal* service support mechanisms the Committee expects that, consistent with the requirement to preserve and advance universal service, the FCC and the Joint Board will consider mechanisms that make implicit subsidies more explicit from access charges."); *id.* at 30 ("[I]n implementing any such cost allocation mechanism, the FCC

The Commission has repeatedly endorsed the 1996 Act's prohibition on implicit subsidies.<sup>4</sup> For example, in the universal service context, the Commission has acknowledged that it must identify implicit support and remove it from interstate access charges.<sup>5</sup> Indeed, Chairman Powell has emphasized on many occasions that the Commission has a strong "commitment to reforming universal service to make [access] subsidies more explicit and portable,"<sup>6</sup> and that the agency "must not quaver in [its] resolve to make that which is implicit explicit."<sup>7</sup>

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(footnote continued from previous page)

and the Joint Board shall seek to insure that such allocation is explicit and applied in a competitively neutral manner.").

<sup>4</sup> See *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long-Distance Users*, Federal-State Joint Board on Universal Service, 15 FCC Rcd. 12962, ¶¶ 185-232 (2000) ("CALLS Order").

<sup>5</sup> See *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charges*, 12 FCC Rcd. 15982, ¶¶ 5-8 (1997), *aff'd sub nom.*, *Southwestern Bell v. FCC*, 153 F.3d 523 (8th Cir. 1998); see also *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Federal-State Joint Board on Universal Service, *Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation, Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, 16 FCC Rcd. 19613, ¶¶ 8, 138 (2001) (concluding that leaving the removal of implicit support to the discretion of individual carriers is neither consistent with the mandate of the 1996 Act nor justified from a public policy standpoint); *Developing a Unified Inter-carrier Compensation Regime*, 16 FCC Rcd 9610, ¶ 32 (2001) ("Congress in the 1996 Act directed [the] Commission and the states to reform universal service, and in particular, to eliminate implicit subsidies contained in access charges and instead make all universal service support explicit.").

<sup>6</sup> *Low-Volume Long-Distance Users*, Separate Statement of Commissioner Powell, 15 FCC Rcd. 6298 (1999).

<sup>7</sup> *Federal-State Joint Board on Universal Service*, Statement of Commissioner Powell, 14 FCC Rcd. 20432 (1999); see also *Federal-State Joint Board on Universal Service*,

(footnote continued on following page)

It is now acknowledged that recovery of ILEC contributions to the USF through access charges constituted impermissible implicit subsidies that had to be eliminated and recovered from end users.<sup>8</sup> On this basis, the *CALLS Order*, 15 FCC Rcd. 12962, ¶¶ 120, 219-21, 244 (2000), eliminated the flowback of the price cap LECs' USF contributions via access charges. And, the Commission waived the requirements of certain access charge rules to permit NECA and other rate-of-return carriers to recover their USF contributions from end users.<sup>9</sup>

The statutory prohibition on implicit subsidies extends to all contribution requirements. Thus, for example, in creating a cost recovery mechanism for Local Number Portability, the Commission determined that recovery through access charges would be entirely inappropriate.<sup>10</sup>

Like universal service subsidies and local number portability costs, carriers' contributions to the TRS Fund are not access-related costs but rather are the costs of supporting a particular program to make telephone service more accessible to persons with hearing and/or speech disabilities and thus benefit all users of the telecommunications

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(footnote continued from previous page)

Separate Statement of Commissioner Powell, 14 FCC Rcd. 8078 (1999) (stating that eliminating support from access charges has "some important merits").

<sup>8</sup> *COMSAT Corp. v. FCC*, 250 F.3d 931, 938 (5th Cir. 2001) (Commission may not even permit the maintenance of implicit subsidies); *Alenco Comm. v. FCC*, 201 F.3d 608, 623 (5th Cir. 2000); *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 425 (5<sup>th</sup> Cir. 1999).

<sup>9</sup> *Waiver of Sections 69.3(a) and 69.4(d) of the Commission's Rules*, 16 FCC Rcd. 12499 (2001).

<sup>10</sup> *See Number Resource Optimization*, 15 FCC Rcd. 7574, ¶ 193 (2000).

network. Accordingly, the Commission must eliminate recovery of LECs' TRS Fund contributions from carrier access charges.

All independent local exchange carriers and the majority of Bell companies now have in-region long distance authority and would be able to recover their USF obligation through their interstate toll rates, just as other long distance carriers do. Accordingly, the Commission should order the removal of flowback as soon as possible.

### CONCLUSION

For these reasons, the Commission should: (1) clarify that absent reimbursement carriers should not have to serve international IP Relay traffic and order NECA to reimburse AT&T for service provided, (2) order NECA to maintain the existing VRS reimbursement rate, (3) extend the VRS waivers for five years, and (4) eliminate the ILEC flowback of TRS Fund contributions through carrier access charges.

Respectfully submitted,

AT&T CORP.

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Its Attorneys

May 22, 2003

### **CERTIFICATE OF SERVICE**

I, Judy Sello, do hereby certify that on this 22nd day of May, 2003, a copy of the foregoing "Comments of AT&T Corp." was served by U.S. first class mail, postage prepaid, on the parties named below.

John Ricker  
Director, Universal Service Support Program  
National Exchange Carrier Association, Inc.  
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*/s/ Judy Sello*  
Judy Sello